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Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS,

INDEX TO ANNOTATION OF THE LAWYERS REPORTS ANNOTATED

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Power of Court to Inquire as to Character of Applicants for Admission to the Bar.

A denial of the power of the court to inquire into the character of an applicant for admission to the bar is found in the recent decision in Re Applicants for License, 143 N. C. 1, 10 L.R.A.(N.S.) 288, 55 S. E. 635. The court held that a statute providing that applicants who should be of a certain age, and should file a certificate of character, and satisfy the court of their competent knowledge of the law, should receive licenses to practise law, made the certificate of character which was furnished by the applicant in compliance with the statute conclusive upon the court as to that question. The certificate of character which the statute required had to be signed by two attorneys who practised in the court. The opinion of the court says: "To hold, as we are requested to do here, that, when a legislature has acted and established the qualifications which shall be required, the court can go on and superadd others, would, in effect, destroy the right admitted to be in the legislature, and uphold the court in the exercise of legislative power. If a legislature, having prescribed certain qualifications, should undertake to direct whether an applicant did or did not possess them, this might be an unconstitutional exercise of judicial power. But not so here. The legislature has established a general standard to which all applicants must conform, and has referred it to the court to decide whether, in any particular case, the requirement has been met. The principal test, then, by which the two powers are distinguished, is complied with. The legislature, in the valid exercise of the police power, lays down a general rule. The judiciary applies the principle to the particular case." To the contentions that the statute impairs or destroys the inherent right of the courts to admit and control the conduct of the attorneys who are its officers, the court said there are decisions which so express themselves, and added that, "if by inherent they intend to say—and this is all that most of them do say—that, in the absence of legislation on the subject, the courts have the power to regulate and deal with the matters mentioned, this may be accepted. But, if by inherent is meant that the power, to the extent claimed here, is one inherent because essential to the existence of the court and the proper exercise of its functions, we do not think the position can be maintained."

The decisions generally recognize that the legislature may prescribe general conditions upon which an applicant may be admitted to the bar, and that such requirements will be followed by the courts. But the respective rights of the legislative and judicial departments of the government in

respect to the admission of attorneys present a question as to which there is no small conflict of opinion. The annotation to the above case in 10 L.R.A.(N.S.) 288, reviews the authorities on this question, and shows that the courts have generally claimed the right to prescribe other qualifications for attorneys in addition to those which the legislature may have prescribed, when they deem it necessary to protect the court and the public from persons of bad repute. The above case seems to be the only one which has expressly denied the right of the court to pass for itself on the moral character of applicants. And some courts have denied altogether that there is any right in the legislature to prescribe the qualifications of applicants to it for admission to the bar. In substantial conflict with the North Carolina decision is that of the supreme court of Pennsylvania in Splane's Petition, 123 Pa. 527, 16 Atl. 481, holding that a statute was void which provided that an attorney admitted to the bar in one county should, on motion, be admitted in all other courts of the state upon presenting a certificate of the judge of the county where he was admitted to the fact of his admission, and also to his good moral character. The court said: "No judge is bound to admit, or can be compelled to admit, a person to practise law who is not properly qualified, or whose moral character is bad. The profession of the law is one of the highest and noblest in the world. The relation between attorney and client is a very close one, and often involves matters of great delicacy. The attorney is an officer of the court, and is brought into close and intimate relations with the court. Whether he shall be admitted, or whether he shall be disbarred, is a judicial, and not a legislative, question." In Wisconsin the decisions are to similar effect, as in the case of Re Mosness, 39 Wis. 509, 20 Am. Rep. 55, denying the validity of a statute authorizing an attorney residing in another state to be admitted to practise law in that state upon compliance with certain conditions. In Illinois a statute authorizing possessors of certificates of graduation from law schools to be admitted to the bar was held an encroachment on the judicial branch of the government, in Re Day, 181 Ill. 73, 50 L.R.A. 519, 54 N. E. 646; the court said: "The function of determining whether one who seeks to become an officer of the courts, and to conduct causes therein, is sufficiently acquainted with the rules established by the legislature and the courts governing the rights of parties, and under which justice is administered, pertains to the courts themselves. They must decide whether he has sufficient legal learning to enable him to apply those rules to varying conditions of fact, and to bring the facts and law before the court so that a correct conclusion may be reached. The order of admission is the judgment of the court that he possesses the requisite qualifications under such restrictions and limitations as may be properly imposed by the legislature for the protection and welfare of the public." The court distinguished between the licensing of doctors, plumbers, and persons of other callings, and said: "The attorney is a necessary part of the judicial system, and his vocation is not merely to find persons who are willing to have law suits. He is the first one to sit in judgment on every case, and whether the court shall be called upon to act depends on his decision." The other decisions on the different phases of the question are not free from conflict, but the general trend of them has been to maintain the right of the courts to exercise authority over the admission of applicants to the bar, not only in the absence of statute, but even when, by strict construction of the statutes making certain provisions on the subject, the courts would be excluded from exercising that function. The North Carolina case may be said to be the strongest of the authorities to the effect that the power to prescribe the qualifications and conditions for admission to the bar is a legislative, and not a judicial, function.

Right of Inheritance.

A vigorous and aggressive attack upon the doctrine that the right to take property by will or inheritance is subject to the will of the legislature is made by the supreme court of Wisconsin in the recent case of Nunnemacher v. State, 129 Wis. 190, 9 L.R.A.(N.S.) 121, 108 N. W. 627. The court emphatically lays down the doctrine that the right to take property by inher-

itance, or by will, is a natural right protected by the Constitution, which cannot be wholly taken away, or substantially impaired, by the legislature. But the prevailing opinion says: "We are fully aware that the contrary proposition has been stated by the great majority of the courts of this country, including the Supreme Court of the United States." And it adds; "The unanimity with which it is stated is perhaps only equaled by the paucity of reasoning by which it is supported." The Wisconsin court declares that there are inherent rights existing in the people prior to the making of any of our Constitutions, and that the right to take property by inheritance or will has existed in some form among civilized nations from the time when the memory of man runneth not to the contrary; and that such rights are a part of the inherent rights which governments are established to conserve. The court therefore denies that these rights can be taken away by the legislature. A concurring opinion, which states it is added more by way of emphasis than for any other reason, says it should be cause for much gratification to all who appreciate the principles of constitutional liberty, that the court has the courage to cut loose from a judicial error that has been almost universally proclaimed by the courts of this country for many years. Admitting that the doctrine attacked "has been affirmed over and over again by judges and courts of the highest respectability," and that "eminent jurists whose names are written high in the temple of judicial fame have stood sponsors for it," this opinion says: "We may well hope that the position of this court, now taken, will mark a return movement to a better appreciation of the great change which the Constitution made from a form of personal government unrestrained in the ultimate, except by the conscience of the sovereign, to a government by the people under the restraints of a written Constitution setting up the standard necessary to life, liberty, and the pursuit of happiness, and creating a judicial system, independent of all other departments, with supreme power to guard that standard."

The annotation to the above case, found in 9 L.R.A.(N.S.) page 121, presents numerous decisions which have recognized the doctrine which the Wisconsin court rejects. One of the earliest of the decisions of the Supreme Court of the United States, in Dawson v. Godfrey, 4 Cranch, 321, 2 L. ed. 634, said the right to inherit is not "a natural and perfect right," but "has its origin in, and is modified to infinity by, the laws of society." Similar language has been used in the great number of later decisions by Federal and state courts. The doctrine of the Wisconsin court, as, indeed, that court itself recognized, is opposed to the whole course of legal doctrine in this country. The law of descent and distribution in all the states seems to be built upon the conclusion that the legislature has the power to control the transfer of the property of decedents. When aliens or bastards are denied the right to inherit, there is obviously a rejection of the doctrine that inheritance is a natural right. In fact, the whole subject of the transfer of the property of decedents has always been subject to legislative regulation. The Wisconsin court admits that the subject may be regulated. It admits that "lines of descent may be prescribed, the persons who can take as heirs or devisees may be limited, collateral relatives may doubtless be included or cut off, the manner of the execution of wills may be prescribed, and there may be much room for legislative action in determining how much property shall be exempted entirely from the power to will, so that dependents may not be entirely cut off. These are all matters within the field of regulation." But the court says: "The fact that these powers exist and have been universally exercised affords no ground for claiming that the legislature may abolish both inheritances and wills, turn every fee-simple title into a mere estate for life, and thus, in effect, confiscate the property of the people once every generation."

Probably none of the cases in the long array of decisions which are repudiated by the Wisconsin court involved any such extreme exercise of the right of regulation as could be properly said to destroy the right to dispose of property by will, or the right of at least some of the relatives of an intestate to inherit. But, inasmuch as all the statutes which have regulated and restrained the transfer of decedents' estates have been upheld by the courts, and as the Wisconsin court admits that the statutes can limit the classes of persons who may take as heirs or devisees, and that the right to will property away from dependent rel-

atives may be restricted, it is not easy to see where the line can properly be drawn between the restrictions and limitations which the legislature may make and those which, according to the Wisconsin doctrine, would be unconstitutional. If the restriction of the right to inherit or dispose of property by will is a matter within the scope of legislative power as an exercise of public policy, the extent to which that regulation may go would seem to be a matter for the legislature, and not for the court, to determine. If the legislature, as the Wisconsin court admits, can prescribe lines of descent and limit the persons who can take as heirs or devisees, it must thereby deny that those who are thus excluded had a natural right to inherit. If collateral relatives can be cut off, why not those of a certain degree of kinship; and if those of one degree can be cut off, why not those of the next degree? If the legislature can prohibit a disposal by will of all of the testator's property, thus limiting his natural right to dispose of it, why may not another legislature proceed to limit it still further? The right to make some limitations is conceded. The question of the extent of the limitations that can properly be made seems to be one of those questions of public policy which belong to the legislative department of the government to determine.

Guest's Right to Room in Hotel.

It is surprising that, after some centuries of development of the law in respect to the relations of guests and innkeepers, there is an almost entire absence of precedents as to what are the rights of a guest in a hotel to a continuance of his occupation of a room when the landlord chooses to transfer him to a different room. In the late case of Hervey v. Hart (Ala.) 9 L.R.A.(N.S.) 213, 42 So. 1013, a guest at a hotel in Mobile during Mardi-Gras festivities found, on attempting to return to his room after he had been temporarily absent from it, that he was excluded from its further occupation. He brought an action, alleging that, while temporarily absent from his room, the landlord had caused his baggage to be removed from it, and that he refused to furnish him any other proper accommodations, although it was then late in the night, and the city was crowded with people, so that he could not get accommodations in the city, and that he was compelled to wander about the city for the greater portion of the night, seeking a place to sleep. He offered evidence of these facts, but the evidence of the defendant was somewhat in conflict with it. The jury found against the plaintiff, but a motion for a new trial was granted, and it was affirmed on appeal. The supreme court declared the law on the subject to be that the innkeeper has the right, and the sole right, to select the apartment for a guest, and, if he finds it expedient, to change the apartment, and assign the guest to another, without becoming a trespasser in making the change; that, if he offers proper accommodations in lieu of the room which is taken away from the guest, he is not liable; but if, having the necessary convenience, he refuses to afford reasonable accommodation, he is liable to an action for damages. The court relied upon the Canadian case of Doyle v. Walker, 26 U. C. Q. B. 502, which lays down the same doctrine. These seem to be the only decisions that are directly in point, and both deny that a guest to whom a room is assigned acquires any right to occupy it beyond the discretion of the landlord, provided, only, that the landlord gives him other proper accommodations.

Excluding Public from Criminal Trial.

It is customary in some states, as, for instance, in New York, for a trial judge to exercise a great deal of discretion in the exclusion of people from the courtroom during criminal trials, when the character of the testimony, or some other reason, makes it seem fitting to him to do so. Thus, in People v. Hall, 51 App. Div. 57, 64 N. Y. Supp. 433, where the court knew from a former trial that the testimony in the case would be particularly revolting and disgusting, he ordered all persons who had no business with the court, or connection with the case, to be excluded from the room, though he permitted the defendant to have any friends whom he desired to sit with him. On appeal, the court said: "The county judge had in mind the neces-

sity of a public trial. He was insistent in stating that any friends of the defendant would be admitted, or anyone that his counsel suggested. The reason for his order was again and again made plain,—that it was in consequence of the salacious details which were to be presented, and not with any view of hampering the defendant, or creating sentiment adversely to him. We think he possessed a discretion, and exercised it wisely." Cases in other states uphold a similar discretion of trial judges, where the indecency of the testimony is likely to draw people of morbid curiosity to the courtroom, and especially when the conduct of the audience in case of such testimony embarrasses the witnesses. Another equally good reason for such an order of exclusion is to secure the proper administration of justice by preserving order and suppressing confusion, or to prevent the presence of dangerous persons. Also, the refusal to admit people after the seats in the courtroom have been filled is deemed proper. But in People v. Murray, 89 Mich. 276, 14 L.R.A. 809, 28 Am. St. Rep. 294, 50 N. W. 995, where citizens and taxpayers were excluded by an officer while the seats for spectators were not all occupied, it was held that an order of the court to the officer to "see that the room is not overcrowded, but that all respectable citizens be admitted, and have an opportunity to get in whenever they shall apply," amounted to a deprivation of the constitutional right to a public trial. In the recent case of State v. Hensley, 75 Ohio St. 255, 9 L.R.A.(N.S.) 277, 79 N. E. 462, the court made an order, in view of the prospect of immoral and obscene testimony, that no one should be admitted except the jury, defendant's counsel, and members of the bar, and newspaper men, and one other person, who was a witness for the defendant, and it was held on appeal that this exceeded the power of the court, and constituted a denial of defendant's constitutional right to a public trial. But the court recognized considerable discretion on the part of the trial judge in such cases, such as the exclusion of persons whose habits or physical condition rendered them personally obnoxious, or those who interrupted the orderly course of business, and even to clear the room of general spectators when some of them, who cannot be distinguished from others, are so boisterous and insubordinate as to intimidate witnesses. It was further said that persons whose attendance is for the express and only purpose of using the information thus obtained in a way calculated directly to obstruct the administration of justice may be excluded, and added that perhaps the "courtroom loafer," who came only from prurient curiosity, might be excluded; but, in the case under consideration, the court held that the order of exclusion was too general in character, and its limitations of admission too restrictive, saying that "the people have the right to know what is being done in their courts; and free observation and the utmost freedom of discussion of the proceedings of public tribunals that is consistent with truth and decency tends to the public welfare." A statute in Michigan providing that a trial judge should have discretion to exclude "every person except those necessarily in attendance," when it should appear that evidence of licentious, lascivious, degrading or peculiarly immoral acts or conduct will probably be given, was held, in People v. Yeager, 113 Mich. 228, 71 N. W. 491, to be unconstitutional, basing the decision on that of People v. Murray, supra. It will be seen, therefore, that there is considerable divergence of view among the courts on this question. In most jurisdictions, even when an order of exclusion is held unconstitutional, the court clearly recognizes the right to considerable discretion in the trial judge, as in People v. Hartman, 103 Cal. 242, 42 Am. St. Rep. 108, 37 Pac. 153, where an order held invalid excluded from the courtroom all persons except the officers of the court and the defendant; but the court, on appeal, admitted that there was no absolute right of all persons, regardless of the conveniences of the court and the due and orderly conduct of the trial, and that the constitutional provision for a public trial must have a fair and reasonable construction in the interest of the person accused. In support of this, Cooley's Constitutional Limitations, page 383, was quoted to the effect that the requirement of a public trial was fairly observed "if, without partiality or favoritism, a reasonable proportion of the public is suffered to attend, notwithstanding that those persons whose presence could be of no service to the accused, and who would only be drawn hither by a prurient curiosity, are excluded altogether." But there is cer-

tainly much difference in the latitude allowed to the trial judge in different jurisdictions.

Places of Public Accommodation.

The question, What constitutes "a place of public accommodation?" within the meaning of statutes aiming to secure equality of civil rights, is one not altogether free from difficulty. Several states have statutes of this character. The question arose recently in Connecticut, and, in the case of Faulkner v. Solazzi, 79 Conn. 541, 9 L.R.A. (N.S.) 601, 65 Atl. 917, it was held that a barber shop is not a place of public accommodation, which is obliged to give its services without discrimination against colored persons. The court refers to the case of Munn v. Illinois, 94 U. S. 113, 24 L. ed. 77, and various other cases of that class, which regard certain employments and agencies of business as "affected with the public interest," but holds that "so-called quasi-public utilities," and those which involve a natural or virtual monopoly, as well as the occupations of common carriers and innkeepers, are affected with the public interest in a way that ordinary occupations are not, and that barber shops are not to be classed among them. The court does not regard the barber as in any different position in respect to this statute from the physician, the dentist, the manicurist, the chiropodist, the massage giver, the turkish-bath proprietor, etc., or that his business differs in essence from that of every shopkeeper and tradesman. In a note to the case in 9 L.R.A.(N.S.) 601, several cases from other states under similar statutes are collected to the same general effect. In Illinois and Ohio the statutes expressly include barber shops among the establishments which must not discriminate against colored persons. But, in Illinois it was held that a drug store, or the soda fountain therein, was not a place of public accommodation within the meaning of the statute, and in Ohio the same was held with respect to a saloon. One ground for this was that the clearly defined policy of the state was to discourage the sale of intoxicating liquors. In New York, while the statute was similar, except that it also extended to hotels, bath houses, and music halls, the court held that it did not include a boot-blacking stand.

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10 L.R.A. (N.S.) pages 49—464.

Among the New Decisions.

Attorneys. A legislative requirement that persons possessing certain qualifications shall be admitted to practise law is held, in Re Applicants for License to Practise Law (N. C.) 10 L.R.A.(N.S.) 288, not to violate the constitutional or inherent prerogatives of the court.

Bailment. A storekeeper is held, in Wamser v. Browning, King & Co. (N. Y.) 10 L.R.A.(N.S.) 314, not to be responsible for the theft of valuables from the pockets of clothing of a customer which is laid aside to try on garments which the customer desires to purchase, where the customer, knowing that the clerks are busy, proceeds to wait upon himself, and, to his knowledge, there is no one but himself to watch the garments laid aside.

Bankruptcy. A creditor of one discharged in bankruptcy is held, in Ruhl-Koblegard Co. v. Gillespie (W. Va.) 10 L.R.A.(N.S.) 305, to have no right to maintain a suit to set aside an alleged fraudulent transfer of the property of the bankrupt, although such transfer may have been made more than four months prior to the filing of the petition in bankruptcy.

Banks. See BILLS AND NOTES.

Benevolent societies. See INSURANCE.

Bills and notes. A bank which, after indorsing a note to its president for collection and receiving from him a reindorsement to its own order, transfers the note for value to another without striking out its indorsement, is held, in Moore v. First Nat. Bank (Colo.) 10 L.R.A.(N.S.) 260, to be estopped to deny its liability to its transferee as indorser in blank.

A signer of a joint and several promissory note, although known by the payee to be a surety, is held, in Vanderford v. Farmers' & M. Nat. Bank (Md.) 10 L.R.A.(N.S.) 129, not to be discharged, under the negotiable instruments law, by the granting of an extension of time to the principal debtor.

A maker of a note, who appends to his name the word "surety," and is, as between himself and his comaker, a surety only, to the knowledge of the payee, is held, in Cellers v. Lyons (Or.) 10 L.R.A.(N.S.) 133, to be primarily liable, and not to be discharged, under the negotiable instruments law, by an extension of time to the principal obligor.

The mere fact that the name of a partnership is placed on a note as maker after that of a corporation, is held, in Union Nat. Bank v. Neill (C. C. A. 5th C.) 10 L.R.A.(N.S.) 426, not to raise the presumption that it was surety only, so as to show on the face of the instrument an unauthorized use of the partnership name, and render the note invalid in favor of partners without notice, in the hands of one who took it for value before maturity from one having apparent title to it.

Bonds. The right to enter a general judgment against a municipal corporation upon improvement bonds which were issued under a statute which became a part of the contract, and provided that they should be paid only out of funds collected from special assessments upon the benefited property, is denied in Meyer v. San Francisco (Cal.) 10 L.R.A.(N.S.) 110.

The verification of an officer's accounts,

required by his fidelity bond, is held, in United States Fidelity & G. Co. v. Downey (Colo.) 10 L.R.A.(N.S.) 323, not to be satisfied by accepting as true the amount which he has in bank as shown by his bank pass book, without taking any steps to ascertain from the bank whether or not it represents the true state of the accounts.

Cancelation of instruments. A mistake in adding a column of figures representing the extension of items for the furnishing of which a price has been asked, the result of which is adopted as the basis of a bid for the contract of furnishing the material, is held, in Steinmeyer v. Schroeppel (Ill.) 10 L.R.A.(N.S.) 114, not to be such a mistake as can be made the basis of a suit in equity to cancel the contract after the acceptance of the bid.

Carriers. A railroad company is held, in St. Louis, I. M. & S. R. Co. v. Renfroe (Ark.) 10 L.R.A.(N.S.) 317, not to be able to escape its duty of keeping a refrigerator car necessary for the transportation of fruit properly iced by securing the car from an independent contractor and delegating to it the duty of icing the car.

One who undertakes to ride on the running board of a street car, outside of the lowered bar, is held, in Harding v. Philadelphia Rapid Transit Co. (Pa.) 10 L.R.A. (N.S.) 352, to be negligent *per se*, and to have no right to recover for injuries incident to his position, whether he could have gotten a safer position or not.

An electric railway company is held, in Tietz v. International R. Co. (N. Y.) 10 L.R.A.(N.S.) 357, not to be answerable for injury to a passenger of unusual size, due merely to the conductor's assent to the proposition and failure to warn him, when he announces his intention to change his seat by means of the running board of a moving car, of the danger from trolley poles located so near the track that the passenger's body cannot pass between them and the car, although the passenger is not familiar with the road, if that fact is not known to the conductor.

A railroad company is held, in Hanlon v. Central R. Co. of N. J. (N. Y.) 10 L.R.A. (N.S.) 411, to be responsible for the injury of a passenger due to the negligent performance, by its conductor, of a gratuitous act in assisting the passenger from the car to the station platform.

A carrier which accepts an unattended invalid as a passenger, and attempts to render her assistance in boarding the train, is held, in Williams v. Louisville & N. R. Co. (Ala.) 10 L.R.A.(N.S.) 413, to be liable for injuries inflicted on her by its negligence in so doing.

A carrier which has not an equipment adequate to handle the average business tendered it is held, in Yazoo & M. V. R. Co. v. Blum (Mass.) 10 L.R.A.(N.S.), 432, not to be able to avoid liability for failure promptly to transport freight tendered, on the ground that the demand for transportation was at the time so great that it could not have been foreseen, anticipated, or provided for.

See also INJUNCTION.

Charities. A religious corporation is held, in Bruce v. Central Methodist Episcopal Church (Mich.) 10 L.R.A.(N.S.) 74, to be liable for injuries to one engaged in repairing its property through the negligence of its servant in furnishing an unsafe scaffolding.

Checks. The drawee of a forged check, who has paid the same without detecting the forgery, is held, in First Nat. Bank v. Bank of Wyndmere (N. D.) 10 L.R.A. (N.S.) 49, to be entitled, upon discovery of the forgery, to recover the money paid from the party who received it, even though the latter was a good-faith holder, provided the latter has not been misled or prejudiced by the drawee's failure to detect the forgery.

The drawee of a forged draft is held, in Ford v. People's Bank (S. C.) 10 L.R.A. (N.S.) 63, to be entitled to recover back the amount paid upon it to one whose conduct has been such as to mislead him, or induce him to pay the draft without the usual security against fraud.

Conflict of laws. The rule, as to recovery of damages for mental suffering, of the state where a telegram is presented for transmission, and not that of the state where it is to be delivered, is held, in Johnson v. Western U. Teleg. Co. (N. C.) 10 L.R.A. (N.S.) 256, to govern in an action for damages for failure to deliver a telegram, although the suit is brought in the latter state.

Conspiracy. In determining whether or not a contract or combination is in unreasonable restraint of trade, it is held, in Pocahontas Coke Co. v. Powhatan Coal & Coke Co. (W. Va.) 10 L.R.A.(N.S.)

268, that it is immaterial whether or not the commodity which is the subject-matter of the contract or combination is of prime necessity, if the commodity is an article of legitimate trade or commerce.

Constitutional law. An act providing for the counting of straight party votes for a constitutional amendment when such party has indorsed the amendment is held, in State ex. rel. Thompson v. Winnett (Neb.) 10 L.R.A.(N.S.) 149, not to violate the Constitution.

A statute authorizing the state railroad commission, in its judgment, to allow an increase in the capital stock of railroad corporations for such purposes and on such terms as it may deem advisable, or, in its discretion, to refuse it, is held, in State v. Great Northern R. Co. (Minn.) 10 L.R.A. (N.S.) 250, to be invalid because delegating to the commission legislative power

Contracts. A provision, in a contract of membership in the relief department of a railroad, that, if any suit at law shall be brought against the company for damages arising from or growing out of the death of the member, the benefit otherwise payable shall thereby be forfeited, is held, in Chicago, B. & Q. R. Co. v. Healy (Neb.) 10 L.R.A.(N.S.) 198, to be against public policy and void.

A contract for an annual consideration, payable at the expiration of the year, to collect accounts by a system which includes posting lists of debtors, is held, in American Mercantile Exchange v. Blunt (Me.) 10 L.R.A.(N.S.) 414, to be abrogated, so as to prevent recovery, even for the portion of the year which has elapsed, by the passage of a statute pending a yearly period, which prohibits, under penalty, the posting of such lists.

See also CANCELATION OF INSTRUMENTS; INJUNCTION; SPECIFIC PERFORMANCE.

Cotenancy. In ejectment by one tenant in common against a cotenant who has been in undisputed possession and use of the land for twenty years, it is held, in Dobbins v. Dobbins (N. C.) 10 L.R.A.(N.S.) 185 that an actual ouster on his part when the possession was first taken will be presumed.

One tenant in common in possession is held, in Davis v. Poland (Me.) 10 L.R.A. (N.S.) 212, to be entitled to maintain trespass *quare clausum* against his cotenant for entering upon the common property and removing doors and windows from the building for the purpose of rendering it uninhabitable.

Damages. See CONFLICT OF LAWS.

Discovery. The right to order the production of papers for inspection before trial, under U. S. Rev. Stat. § 724, authorizing courts, in actions at law, to require parties to produce papers under circumstances where they might be required to produce them by the ordinary rules of proceeding in chancery, and affixing as a penalty for refusal the entry of judgment as by default, is denied in Cassatt v. Mitchell Coal & Coke Co. (C. C. A. 3d C.) 10 L.R.A.(N.S.) 99, on the ground that, the order being no part of the record of the judgment, the judgment cannot be sustained on appeal, and therefore the order to produce, if disobeyed, is nugatory.

Divorce. The divorce of the parties is held, in Alles v. Lyon (Pa.) 10 L.R.A.(N.S.) 463, not to sever an estate by the entireties.

Ejectment. As against a motion for nonsuit in an action for ejectment, it is held, in Cottrell v. Pickering (Utah) 10 L.R.A. (N.S.) 404, that evidence of a deed to plaintiff, and a survey covering the property, with proof of possession thereunder, is sufficient, without the necessity of establishing a complete record title.

Entireties. See DIVORCE.

Estoppel. See BILLS AND NOTES.

Evidence. Evidence of the good character of the wife is held, in Shipp v. Com. (Ky.) 10 L.R.A.(N.S.) 335, to be inadmissible in a prosecuting of her husband for murder of her alleged paramour, to show that she was not guilty of conduct which accused assigned as a reason for his crime.

See also COTENANCY; FALSE IMPRISONMENT; PRINCIPAL AND SURETY.

False imprisonment. The burden of proof is held, in McAleer v. Good (Pa.) 10 L.R.A. (N.S.) 303, to be on defendants, in an action for unlawful arrest and false imprisonment, to show that it was by authority of law.

Fire escapes. That a building is under lease at the time of the passage of a statute requiring the owner, lessee, or keeper of certain kinds of buildings to provide them with fire escapes, is held, in Yall v. Snow (Mo.) 10 L.R.A.(N.S.) 177, not to relieve the owner of the duty thereby imposed.

Fixtures. A conditional vendor of real estate is held, in Davis v. Bliss (N. Y.)

10 L.R.A.(N.S.) 458, to be bound by an agreement between the vendee and a conditional vendor of personal property which is attached thereto, that the title shall remain in the vendor until the price is paid, where the vendor of the realty does not part with value, or lose any rights on account of the attachment of the personalty to the premises.

Forgery. See CHECKS.

Fraud. See IMPRISONMENT FOR DEBT; SALE.

Imprisonment for debt. To warrant imprisonment for debt, under a constitutional provision that there shall be no imprisonment for debt except in cases of fraud, it is held, in Ledford v. Emerson (N. C.) 10 L.R.A.(N.S.) 362, that fraud must be found by the jury, and a judgment entered in conformity therewith.

Information. That an information of the commission of crime for the investigation of a magistrate cannot be made on information and belief, unless the facts are stated showing the source of the information and the grounds of belief, is held in People ex rel. Livingston v. Wyatt (N. Y.) 10 L.R.A. (N.S.) 159.

Injunction. Equitable jurisdiction to enforce specific performance of a contract not to engage in a certain business is held, in Harris v. Theus (Ala.) 10 L.R.A. (N.S.) 204, not to be ousted by the fact that the contract fixes a sum as liquidated damages in case of breach.

The right to enjoin brokers from dealing in nontransferable railroad tickets which are not issued at the time the decree is entered, is sustained in Lytle v. Galveston, H. & S. A. R. Co. (Tex.) 10 L.R.A.(N.S.) 437, so far as the issuance of the tickets has been announced and they have been offered for sale, so that the right to deal in them presents a live question.

Insurance. A subordinate lodge of a mutual benefit association, which has the power to discipline and expel a member for violating the by-laws of the association, possessing knowledge that a member has forfeited his benefit certificate by violating the by-laws of the association, is held, in Modern Woodmen of America v. Breckenridge (Kan.) 10 L.R.A.(N.S.) 136, to waive the right of the association to insist upon the forfeiture by continuing to receive his dues, and in all other respects treating him as a member until his death.

A provision in the constitution of an assessment insurance company that, in case of deficiency in the assessment to meet a death loss, it may be paid from the emergency fund, is held, in Crawford v. Northwestern Traveling Men's Asso. (Ill.) 10 L.R.A.(N.S.) 264, to leave it optional with the company to make the payment or not.

A provision contained in a "lightning clause" attached as a rider to a fire-insurance policy, that the policy shall not cover loss or damage by cyclone, tornado, or wind storm, is held, in Russell v. German F. Ins. Co. (Minn.) 10 L.R.A.(N.S.) 326, to be limited to the rider, and not to apply to or vary the contract as contained in the policy.

Judgment. A judgment in favor of a defendant in an action by a married woman for personal injuries is held, in Womach v. St. Joseph (Mo.) 10 L.R.A.(N.S.) 140, not to be conclusive against plaintiff in an action by her husband to recover for the loss to him growing out of her injury.

The right of a party to a judgment to impeach or set it aside in a collateral proceeding on the ground that it was obtained by perjured testimony, is denied in Bleakley v. Barclay (Kan.) 10 L.R.A.(N.S.) 230.

But, while false swearing, or perjury, alone, is not ground for setting aside or vacating a judgment, yet it is held, in Graves v. Graves (Iowa) 10 L.R.A.(N.S.) 216, that, if accompanied by any fraud extrinsic or collateral to the matter involved, sufficient to justify the conclusion that, but for such fraud, the result would have been different, a new trial may be granted.

Landlord and tenant. The right of a tenant to remove from the premises manure produced in the usual course of husbandry upon the farm during his tenancy, is denied in Brigham v. Overstreet (Ga.) 10 L.R.A. (N.S.) 453, on the ground that such manure became appurtenant to the realty, and is to be considered and treated as a part of the same.

Larceny. One to whom a lost check is handed for information as to the owner, who, after learning the owner's name, procures, by means of false representations, the instrument to be left with him, and subsequently appropriates it to his own use, is held, in State v. Levine (Conn.) 10 L.R.A.(N.S.) 286, to be guilty of larceny.

Legislature. The power of the house of delegates, by its independent action, to raise

a committee of investigation, with power to sit during the recess of the legislature after the close of the session of the legislature, is denied in Ex parte Caldwell (W. Va.) 10 L.R.A.(N.S.) 172.

Libel. The responsibility of an editor of a newspaper for the publication of a libel without his knowledge, at a time when he is absent from the office, is denied in Folwell v. Miller (C. C. A. 2d C.) 10 L.R.A.(N.S.) 332.

Liens. Since the duty to lay sidewalks arises under the police power, and rests upon the life tenant in possession, it is held, in Meanor v. Goldsmith (Pa.) 10 L.R.A.(N.S.) 342, that the lien for laying such a walk extends only to his interest in the property, under a statute providing that a borough may require the paving of foot walks by the owner of the lots fronting thereon, or cause them to be paved and collect the cost from the owner, under the provisions of law relating to mechanics' liens, where, under the latter law, the lien for a charge against life tenants would extend only to their interest.

Life tenants. See LIENS.

Limitation of actions. The life estate, by reason of his marital rights, of the husband of a woman upon whom an estate is cast, is held, in De Hatre v. Edmunds (Mo.) 10 L.R.A.(N.S.) 86, not to constitute in him a prior life estate which will prevent the running of the statute of limitations in favor of one at the time in adverse possession of the property against the remainder to which the woman herself and her heirs are entitled, since the whole estate must first vest in the wife before the life estate will arise.

Lis pendens. One who, after final decree and termination of a suit to enforce a trust deed, and before an appeal is obtained, purchases in good faith the property which is the subject of the litigation, is held, in Wingfield v. Neall (W. Va.) 10 L.R.A.(N.S.) 443, not to be a purchaser *pendente lite*, and to be entitled to protection in such purchase.

Master and servant. The owner of an automobile is held, in Lotz v. Hanlon (Pa.) 10 L.R.A.(N.S.) 202, not to be liable for injury to a pedestrian run down by it when the chauffeur is, without the owner's knowledge, taking a party of his own friends on a pleasure drive; and it is held to be immaterial that the chauffeur intended, during the excursion, to procure some spark plugs for use on the machine.

The fact that a servant to whose care has been committed compressed air employed by his master in his business turns aside from his duty to guard it carefully, and employs it to injure or frighten others or amuse himself, is held, in Galveston, H. & S. A. R. Co. v. Currie (Tex.) 10 L.R.A.(N.S.) 367, to indicate such a departure from the line of his employment that, even though the air is regarded as a dangerous agency, which it is the duty of the master to guard, the master will be absolved from liability for injuries resulting to third persons from the servant's acts.

A plumber is held, in McConnell v. Morse Iron Works & D. D. Co. (N. Y.) 10 L.R.A.(N.S.) 419, not to exercise, with reference to his helper, superintendence, within the meaning of an employers' liability law rendering the master liable for injuries to employees caused by the negligence of a person intrusted with and exercising superintendence.

Mental anguish. See CONFLICT OF LAWS.

Municipal corporations. Charter authority to prevent and remove nuisances is held, in Cuba v. Mississippi Cotton Oil Co. (Ala.) 10 L.R.A.(N.S.) 310, not to empower a municipal corporation arbitrarily to declare a building used for the storage of cotton seed to be a nuisance, and direct its demolition.

See also BONDS.

Negligence. The doctrine of "last clear chance" is held, in Drown v. Northern Ohio Traction Co. (Ohio) 10 L.R.A.(N.S.) 421, not to apply where the plaintiff has been negligent, and his negligence continues, and, concurrently with the negligence of defendant, directly contributes to produce the injury.

See also CHARITIES.

Nuisance. See MUNICIPAL CORPORATIONS.

Option. The giving of a nominal consideration for an option to purchase real estate is held, in Murphy, Thompson, & Co. v. Reid (Ky.) 10 L.R.A.(N.S.) 195, not to be sufficient to prevent its withdrawal before acceptance.

Ouster. See COTENANCY.

Perjury. See JUDGMENT.

Principal and surety. See BILLS AND NOTES.

Railroad relief association. See CONTRACTS.

Real property. See OPTION.

Sale. That a statement of financial condition to secure a line of credit was true when made, is held, in Atlas Shoe Co. v. Bechard (Me.) 10 L.R.A.(N.S.) 245, not to prevent a rescission of a subsequent sale made on the faith of it, on the ground of fraud, where the contract provided that it might be considered a continuing statement, and a new and original statement upon each and every purchase of goods, and the statement was untrue when the sale which is sought to be rescinded was made.

See also FIXTURES.

Specific performance. See INJUNCTION; VENDOR AND PURCHASER.

Street railways. See CARRIERS.

Trespass. See COTENANCY.

Trial. The irregularity in rendering separate verdicts against defendants in an action for joint tort is held, in Nashville R. & L. Co. v. Trawick (Tenn.) 10 L.R.A.(N.S.) 191, to be properly cured, even after judgment, by entering the judgment against one defendant and dismissing the action against the others.

Vendor and purchaser. One who has contracted for a title to real estate free from encumbrances is held, in Eppstein v. Kuhn (Ill.) 10 L.R.A.(N.S.) 117, to be entitled to have deducted from the purchase price the amount the premises are depreciated in value by an outstanding lease the term of which extends beyond the time fixed for the performance of the contract.

A provision in a contract for the sale of real estate, the buildings upon which constitute an important part of the subject-matter of the contract, that the premises at time of delivery are to be "in the same condition in which they now are, reasonable use and wear of the buildings thereon alone excepted," is held, in Hawkes v. Kehoe (Mass.) 10 L.R.A.(N.S.) 125, not to give the vendee, in case of destruction of the buildings by fire, a right to specific performance with the buildings restored, or with an allowance for their value.

See also SALE.

Waters. A coal company which casts refuse materials into the waters of a stream, by which they are transported to the lands of a lower proprietor to his damage, is held, in Day v. Louisville Coal & C. Co. (W. Va.) 10 L.R.A.(N.S.) 167, to be liable to him therefor, although other companies, acting independently, have contributed to the injury by similar conduct.

New Books.

"New Annotated Indiana Civil Code." By W. W. Thornton. 2 vols. $7.50.

Caldwell's "Notes to the Kentucky Reports." 2 vols. Buckram, $12.

"Law of Cities, Towns, and Villages in West Virginia." By W. H. Bishop. 1 vol. Buckram, $7.50.

"The Ohio School Officers' Guide." By Judge W. M. Rockel. 1 vol. Buckram, $3.

"Illustrative Cases on the Law of Suretyship." Annotated. By Arthur A. Stearns. 1 vol. Buckram, $4.

"The Law and Customs of Riot Duty." By B. L. Barger. 1 vol. Buckram, $3.

"Bates Ohio Statutes." 6th ed. By Charles E. Everett. 3 vols. $12.

"New York Town Clerks' Manual." By G. D. Reed and Erwin E. Shutt. Canvas, $4.50.

"New York Supervisors' Manual." By G. D. Reed and Erwin E. Shutt. Canvas, $5.

"The Procedure and Law of New York Surrogates' Court." By Willis E. Heaton. 2 vols. Canvas, $12.

"New York Overseers of the Poor Manual." By G. D. Reed and Erwin E. Shutt. Buckram, $3.50.

"New York Assessors' Manual." By G. D. Reed and Erwin E. Shutt. Buckram, $3.50.

"Greater New York Charter of 1901." Supplement No. 1, 1907. Arranged by Mark Ash and W. Ash. Paper, 75 cts.

"Uniform Charter of Cities of the Second Class." (New York.) Annotated. By C. F. Bridge. Buckram, $3.

Barnard's "County Commissioners' Legal Guide for the State of Texas." 3d ed. $7.50.

"Law of Commercial Paper and Banking." By T. Campbell Simonton. Buckram, $5.00.

"The Courts and Legal Profession of Iowa." Hon. Chester C. Cole, historian. Hon. E. C. Ebersole, editor. 2 vols. Cloth, $20.

A Selection of Cases and Other Authori-

ties upon Criminal Law." 2d ed. by Joseph H. Beale, Jr. Cloth, $5.

"The Grounds and Rudiments of Law." By William T. Hughes. Vol. 1. $4. Vols. 2, 3, and 4 (1908), each $3.50. Vols. 2, 3, and 4, in one volume, $9.

Bate's, Parties, Pleading, Practice, and Forms under the Code." (1907). 3 vols. Buckram, $18 delivered.

Bostwick's "Lawyers' Manual." 1 vol. Buckram, $6.50 delivered.

Hammon on "Evidence." 1 vol. $6 net.

Recent Articles in Law Journals and Reviews.

"When Does an Amendment Introduce a New Cause of Action (Continued)?"—40 Chicago Legal News, 80.

"Habitual Criminals and the Parole System."—35 National Corporation Reporter, 265.

"The Right of Recovery for Partial Performance of Entire Contracts."—65 Central Law Journal, 292.

"Waiver of Exemption from Service of Process by Reason of Attendance upon Court by Nonresident Party or Witness."—35 National Corporation Reporter, 304.

"State Interference with Interstate Commerce."—13 Virginia Law Register, 497.

Intent in Embezzlement by Corporate Official."—35 National Corporation Reporter, 341.

"A Constitutional Question Suggested by the Trial of William D. Haywood. (Constitutional rights of one accused of crime who is abducted and carried to another state for trial, by officers of the state, under form of law)."—19 Green Bag, 636.

"The Writ of Ne Exeat—Will it Lie in a Suit for Other Than a Money Demand?"—40 Chicago Legal News, 94.

"Liability of Trusts for Private Wrongs."—40 Chicago Legal News, 96.

"Statements by Attorneys in Arguments, Pleadings, and Briefs Pertaining to Rulings and Decisions, as Contempt of Court."—65 Central Law Journal, 331.

"The Segregation of Hawaiian Lepers by Administrative Process."—65 Central Law Journal, 314.

"Railway Passengers' Personal Luggage."—33 Law Magazine and Review, 13.

"The Liability of Justices of the Peace."—33 Law Magazine and Review, 22.

"Letting and Subsequent Sale: Estate Agents' Commissions."—33 Law Magazine and Review, 48.

"The Case of the Monopolies—Some of Its Results and Suggestions."—6 Michigan Law Review, 1.

"Federal Treaties and State Laws."—6 Michigan Law Review, 25.

"The Word 'Not' as a Test of Equity Jurisdiction to Enjoin a Breach of Contract."—2 Illinois Law Review, 217.

"Levy of Attachment upon Rolling Stock of a Railroad Company Doing Interstate Business—Is it a Regulation of, or an Infringement Upon the Freedom of, Interstate Commerce?"—65 Central Law Journal, 351.

"The Law of Bank Checks (Practical Series)."—24 Banking Law Journal 681, 771.

"Enforcement of a Right of Action Acquired under Foreign Law for Death upon the High Seas. I."—21 Harvard Law Review, 1.

"Expropriation by International Arbitration."—21 Harvard Law Review, 23.

"Agreed Valuation as Affecting the Liability of Common Carriers for Negligence."—21 Harvard Law Review, 32.

"The Common Law Jurisdiction of the United States Courts."—17 Yale Law Journal, 1.

"Equality between Nations and International Conventions, as Determining Factors in Shaping Modern International Law."—17 Yale Law Journal, 21.

"Effect of 'Most-Favored Nation' Clause in Commercial Treaties."—17 Yale Law Journal, 26.

"Liability of Corporate Directors."—17 Yale Law Journal, 33.

"Practical Suggestions for Drawing Wills."—55 American Law Register, 465.

"A Century of 'Judge-Made' Law."—7 Columbia Law Review, 453.

"Error of Law."—7 Columbia Law Review, 476.

"The Function of the Judiciary. II."—7 Columbia Law Review, 520.

"Cross-Examination."—6 Criminal Law Journal of India, 65.

"Identity of Issues on Appeal from Justice's Court."—65 Central Law Journal, 368.

"The Police Power—Its Importance and Development."—15 American Lawyer, 482.

"Morals, Health, and Rights of Women Workers Protected by Labor Legislation."—69 Albany Law Journal, 304.

"The Trial of the Insane for Crime."—69 Albany Law Journal, 306.

"Liability of Innkeeper for Offensive Acts of Employees."—69 Albany Law Journal, 313.

The Humorous Side.

A GOOD ONE ON HIM.—A Minnesota lawyer sent us the following letter, which a prospective bridegroom wrote when returning a marriage license that he found he did not want:

".....,

"Dear Sir:—

"I will return those licens they are no good to me. For the stuff is off for this time. And they are no good to me with that girl.

"Now if there is anything els to the returning of thes papers let me no an I will make it right pleas keep this as quite a possible (although it is a good one on me) and oblige

"Yours truly

"X..... Z....."

MOODS ILLUSTRATED.—The following is taken from Harper's Weekly:

"A member of the faculty of the University of Wisconsin tells of some amusing replies made by a pupil undergoing an examination in English. The candidate had been instructed to write out examples of the indicative, the subjunctive, the potential, and the exclamatory moods. His efforts resulted as follows: " 'I am endeavoring to pass an English examination. If I answer twenty questions, I shall pass. If I answer twelve questions, I may pass. God help me!' "

FOLLOWING A PRECEDENT.—The readiness with which courts adopt precedents rendered in other jurisdictions is shown by the following decision of a justice of the peace in Arizona. The Arizona Daily Star says that the justice is a stickler for order within certain limits, and that he showed the other day that he was also the observer of judicial precedent. His town is described as one of the principal stations on the great hobo route across the continent, and the place where most of the hobo passengers get ditched. The account says that they linger about the station waiting for an outlet, and many of them give way to lawless tendencies. Further proceedings may be given in the language of the Star.

"Justice Williams orders them arrested in the evening, and they are chained to a stake on the desert until next morning, when they are given a more or less summary trial. It it too expensive to send them to Florence, the county seat. The court therefore administers an alternative sentence consisting of an hour or two to get out of the bailiwick. The defendant, after his night on the desert, usually accepts the alternative.

"The other day a hobo who had been so chained out was brought before the court and was promptly convicted. In pronouncing his doom, Judge Williams said: 'It is the judgment of this court that you are guilty as charged, and this court, following the precedent recently set by another learned and eminent jurist of the east, will assess against you a fine of $29,400,000, or, as an alternative, this court will give you two hours to get out of town."

"The hobo rose, bowed and said: 'Judge, will you please let me have a check book. I dislike to part with so large a sum in a single lump, but circumstances compel me to do it. I am, as you may observe, in ill health, and am traveling on the advice of my family physician, who has warned me against doing anything precipitate. I fear the result on my heart of the suddenness of action involved in your alternative. Let me have the check book.'

"It is needless to say he hiked."

A PROMISE TO PAY.—"A merchant in a Wisconsin town who had a Swedish clerk, sent him out to do some collecting. When he returned from an unsuccessful trip he reported:

" 'Yim Yonson say he vill pay ven he sells his hogs. Yim Olsen, he vill pay ven he sell him wheat, and Bill Pack say he vill pay in Yanuary.' "

" 'Well,' said the boss, 'that is the first time Bill ever set a date to pay. Did he really say he would pay in January?'

" 'Vell, aye tank so,' said the clerk. 'He say it ban a dam cold day ven you get that money. I tank that ban in January.' "

—Harper's Weekly.

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Even New York has to go Outside for Precedents

The Courts of New York have passed upon more points of law than any other state—perhaps more than any other two states. Therefore the following remarks will apply with at least equal force wherever you are practising.

We recently analyzed several volumes of Lawyers Reports Annotated to find out what percentage of the questions covered by the notes of that series had *not* been passed upon by New York Courts. We found it to be twenty-five per cent.

These are questions like the Note to the Illinois case of Steinmeyer v Schroeppel, reported in vol. 10 L. R. A. New Series, (Dec. 1907) page 114, on

"Mistake in computation by contractor as ground for relief."

This is a question which supposedly might arise in your practice wherever it is. The Note analyzes six American cases (besides the case reported), from three states, one English and one Federal case, and these cases show a decided conflict. *The question has never been passed upon by the courts of New York, Massachusetts, Pennsylvania, New Jersey, Connecticut, Ohio, nor any others but three.*

To prepare your brief on most important questions like this, you must go outside your state for authority. In the Lawyers Reports Annotated you have no cases of merely local value, such as state reports are crowded with, but you have the late law-making cases on subjects of general value, with notes analyzing and classifying not only all the foreign cases, but your own as well.

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